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Attorneys for Sonos, Inc.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12
13 GOOGLE LLC,

14 Plaintiff,

15 vs.

16 SONOS, INC.,

17 Defendant.
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Case No. 3:20-cv-06754 WHA
Related to Case No. 4:21-07559

**JOINT MOTION FOR ISSUANCE OF
LETTER OF RENEWED REQUEST FOR
INTERNATIONAL JUDICIAL
ASSISTANCE AND APPOINTMENT OF
COMMISSIONERS TO TAKE
EVIDENCE PURSUANT TO CHAPTER
II, ARTICLE 17 OF THE HAGUE
CONVENTION OF 18 MARCH 1970 ON
THE TAKING OF EVIDENCE ABROAD
IN CIVIL OR COMMERCIAL MATTERS**

Referral: Hon. Donna M. Ryu, USMJ

1 December 22, 2022

2 Submitted via ECF

3 Hon. Donna M. Ryu, USMJ
 4 Oakland Courthouse, Courtroom 4
 1301 Clay Street, 3rd Floor
 5 Oakland, CA 94612

6 Re: Joint Submission for Issuance of Letter of Renewed Request for International
 7 Judicial Assistance
Google LLC v. Sonos, Inc., Case No. 4:20-cv-06754-WHA (N.D. Cal.)
 8 *Sonos, Inc. v. Google LLC.*, Case No. 4:21-cv-07559-WHA (N.D. Cal.)

9 Your Honor:

10 The parties in the above-referenced actions seek the Court's assistance in order to take
 11 additional deposition testimony from witness Janos Levai in Switzerland. The Court previously
 12 assisted the parties in obtaining permission to depose Mr. Levai in Switzerland, granting the parties'
 13 joint motion on April 25, 2022 and appointing various of the parties' counsel as commissioners. *See*
 14 Dkts. 225, 226. However, on December 8, 2022, this Court ruled that Sonos was permitted to take
 15 additional testimony from Mr. Levai in connection with granting Google, LLC's ("Google") Motion
 16 Amend for Leave to Amend Invalidity Contentions Pursuant to Patent L.R. 3-6. *See* Dkts. 418, 425.
 17 Mr. Levai is a Software Engineer at Google who will offer further testimony relevant to this action.
 18 The parties have agreed to again conduct a remote live video deposition of Mr. Levai in Switzerland.

19 Switzerland, as a party to the Hague Convention, requires litigants to obtain permission from
 20 the Federal Office of Justice before taking deposition testimony of a witness located in Switzerland.
 21 Google has corresponded with the Federal Office of Justice, who has confirmed that the parties may
 22 request a "renewal" of the previously-granted permission for Mr. Levai's deposition in Switzerland
 23 by submitting a short supplemental order from this Court that explains the purpose of the additional
 24 testimony and the similarities to the previous deposition. To that end, the parties request that the
 25 Court (1) appoint a Swiss commissioner and appoint representatives for the parties who will
 26 participate in the deposition as commissioners, and (2) request judicial assistance from the
 27 applicable Swiss authorities.

28 Accordingly, we ask that the Court grant the parties' Joint Motion for Issuance of Letter of
 Renewed Request for International Judicial Assistance and Appointment Of Commissioners to Take
 Evidence Pursuant to Chapter II, Article 17 of The Hague Convention of 18 March 1970 on the
 Taking of Evidence Abroad in Civil or Commercial Matters. The parties have agreed that Olivier
 Buff, a Swiss attorney representing the Google, will again be appointed Swiss Commissioner. The
 parties have also agreed that Nima Hefazi and James Judah will be appointed commissioners for
 Google, and Dan Smith, Michael Boyea, and Sean Sullivan will be appointed commissioners for
 Sonos, Inc.

Thank you for Your Honor's kind attention to this matter.

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1 Sonos, Inc. (“Sonos”) and Google LLC (“Google”) hereby move the Court pursuant to
 2 Fed. R. Civ. P. 28(b) for entry of an order (the “Order”):

- 3 (1) Appointing Nima Hefazi and James Judah on behalf of Google and Dan Smith,
 4 Michael Boyea, and Sean Sullivan on behalf of Sonos, as commissioners (together, the
 5 “Commissioners”), pending the approval of the Swiss authorities, to conduct the
 6 additional examination of witness Janos Levai in Switzerland pursuant to Chapter II,
 7 Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence
 8 Abroad in Civil or Commercial Matters, T.I.A.S. No. 7444, 23 U.S.T. 2555 (“Chapter
 9 II of the Hague Convention”);
- 10 (2) Appointing Olivier Buff as commissioner (the “Swiss Commissioner”), pending the
 11 approval of the Swiss authorities, to supervise the additional examination of witness
 12 Janos Levai in Switzerland pursuant to Chapter II of the Hague Convention;
- 13 (3) Issuing a Letter of Renewed Request for International Judicial Assistance (“Letter of
 14 Renewed Request”) pursuant to 28 U.S.C. § 1781 and Chapter II of the Hague
 15 Convention;
- 16 (4) Directing submission of the Letter of Renewed Request for Assistance to the Swiss
 17 Federal Office of Justice (“FOJ”) for the purpose of approving the appointment of the
 18 Commissioner; and
- 19 (5) Granting such other and further relief as this Court may deem just and proper.

20 The parties have agreed to use the procedures of Chapter II of the Hague Convention to
 21 facilitate the deposition of Janos Levai in Switzerland, who has consented to being deposed there
 22 via remote means. Under Chapter II, a deposition is supervised by a Swiss Commissioner and
 23 conducted by commissioners representing the parties and duly appointed by the Court in the U.S.
 24 proceeding, all of whom are authorized to proceed by the FOJ at the request of the U.S. tribunal.
 25 This procedure will not restrict the scope of discovery otherwise permissible under the Federal Rules
 26 of Civil Procedure.

27 The steps to proceed under Chapter II of the Hague Convention and in accordance with the
 28 FOJ’s directive are as follows:

- 1 1. The Court must duly appoint one or several commissioner(s) for the purpose of taking
- 2 evidence abroad. A proposed order for the Court to appoint commissioners is attached hereto
- 3 as Exhibit A (the “Proposed Order”).
- 4 2. The Court must issue the Letter of Renewed Request to the FOJ for authorization to take
- 5 evidence abroad. A proposed Letter of Renewed Request is attached hereto as Exhibit B
- 6 (the “Proposed Letter of Renewed Request”).
- 7 3. The Proposed Letter of Renewed Request must be filed with the FOJ. Google will undertake
- 8 this step if the Court grants the instant motion.
- 9 4. Upon approval from the FOJ and subject to the terms contained in the Proposed Letter of
- 10 Renewed Request, the parties will arrange for a live video deposition. Olivier Buff will be
- 11 present in person at the deposition of Mr. Janos Levai to supervise proceedings.
- 12 5. The deposition will take place at the Swiss offices of Quinn Emanuel at Dufourstrasse 29,
- 13 8008 Zürich, Switzerland or another nearby office if additional space is required. Mr. Janos
- 14 Levai has agreed to voluntarily comply by proceeding pursuant to Chapter II of the Hague
- 15 Convention.
- 16 6. Neither the entry of the Proposed Order, the Proposed Letter of Renewed Request nor the
- 17 conduct of the deposition pursuant to Chapter II of the Hague Convention shall constitute or
- 18 operate as a waiver of the attorney-client privilege, the work product doctrine, or any other
- 19 privileges, rights, protections, or objections that may apply to that evidence under the laws
- 20 of Switzerland, or of the United States, nor as a concession that any assertion of any such
- 21 privilege, right, protection, or objection is necessarily valid.

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23 Dated: December 22, 2022

Respectfully submitted,

24 /s/ Sean Sullivan

/s/ Charles K. Verhoeven

25 Sean Sullivan
26 Attorneys for SONOS, INC.

Charles K. Verhoeven
Attorneys for GOOGLE LLC

27 LEE SULLIVAN SHEA SMITH LLP

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

ATTESTATION OF CONCURRENCE

I am the ECF user whose ID and password are being used to file this Joint Motion for Issuance of Letter of Request for International Judicial Assistance and Appointment of Commissioners to Take Evidence Pursuant to Chapter II, Article 17 of The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the signatories identified above has concurred in the filing of this document.

Dated: December 22, 2022

By /s/ Charles K. Verhoeven
Charles K. Verhoeven
Counsel on behalf of Google